

# Procedures for Reviewing and Appealing A Notice of Deficiency Determination

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This information guide summarizes the procedures by which a taxpayer who has received a Notice of Deficiency Determination from the Nebraska Department of Revenue may obtain administrative review of the proposed assessment of tax, penalty, and interest. This guide also covers the appeal procedures by which a taxpayer may obtain judicial review of the State Tax Commissioner's final decision. Nebraska taxpayers have the right to due process of law in matters before the department. The department will provide a fair and timely review of protests and appeals of disputed tax matters. This guide does not address all questions which may arise but is intended to provide the taxpayer with an overview of the review and appeal procedures.

## What is a Notice of Deficiency Determination?

A Notice of Deficiency Determination is a letter informing the taxpayer of the amount of additional tax, interest, and penalty the Nebraska Department of Revenue asserts is due to the state of Nebraska. The notice may result from an audit or review of the taxpayer's books and records, or it may be based upon the best information available to the department. Schedules and work papers identifying the basis for the assessment may be enclosed with the notice. If the taxpayer has any questions concerning the computation of the amount assessed, including interpretation of any enclosed work papers or schedules, the service area in the department that issued the notice should be contacted.

If the taxpayer has any questions concerning the appeal procedures or the department's position concerning an item which was taxed, Legal Services should be contacted.

The amount of the deficiency will appear on the applicable preidentified Nebraska tax return or on a balance due notice if it is not paid. This is to keep the taxpayer informed of the current balance assessed to the account, including updated interest.

**Penalty.** Penalty is assessed in accordance with the statutes. The State Tax Commissioner has discretionary authority to abate all or a portion of the penalty. The taxpayer may request penalty abatement at any time. An Application for Abatement of Penalty, Form 21, is available from the department.

**Interest.** The department assesses interest on unpaid taxes, as required by statute. The State Tax Commissioner does not have authority to waive interest generally, but may correct errors in its computation. If the taxpayer can identify a computational error, it will be adjusted upon request, without need to file a petition for redetermination. In all cases, interest accrues only on the amount of tax finally determined to be due. Interest is never owed on penalty or interest.

Interest accrues on the tax portion of the assessment until the taxes are paid. A taxpayer may wish to stop the accrual of interest on the tax portion of a proposed assessment, without giving up the right to contest the assessment before it becomes final. If so, the tax portion can be paid "under protest." To make a payment of a proposed tax assessment "under protest," the payment must be accompanied with a clear statement to that effect, in writing, and the taxpayer must file (or have already filed) a timely petition for redetermination of the disputed taxes.

## Do you agree with the assessment?

If the taxpayer accepts the Notice of Deficiency Determination as issued, payment of the amount assessed is to be mailed to the Nebraska Department of Revenue, P.O. Box 94818, Lincoln, Nebraska 68509-4818. A copy of the Notice of Deficiency Determination should be included with the payment to ensure proper credit. If you remit tax to the department by electronic funds transfer (EFT) or you wish to pay by credit card, please contact the department.

## Do you disagree with the assessment?

If the taxpayer wishes to dispute the Notice of Deficiency Determination, a timely petition for redetermination must be filed with the Nebraska Department of Revenue, Legal Services, P.O. Box 94818, Lincoln, Nebraska 68509-4818. This petition for redetermination must be in writing. Although petitions may be amended to supply some omitted elements, no writing filed with the department will be recognized as a petition for redetermination unless it is sufficient to identify the taxpayer and inform the department of the taxpayer's intent to protest an identifiable Notice of Deficiency Determination.

An acceptable petition for redetermination must include the following elements:

- Identification of the taxpayer.
- Identification of the specific Notice of Deficiency Determination being protested.
- Identification of each item or issue within the proposed assessment being protested. Include a statement as to why it is believed the assessment is incorrect (where appropriate, the protested items should be identified by their audit worksheet page and line numbers).
- A statement of the relief sought by the taxpayer.
- Signature of the taxpayer or authorized representative.

Taxpayers are responsible for the timeliness and adequacy of their petitions for redetermination. The department will provide assistance regarding the form and content of a petition for redetermination upon request.

**Time.** The taxpayer must file a petition for redetermination within 30 days from the postmark date of the Notice of Deficiency Determination for all state taxes except income taxes, drug tax, and jeopardy assessments. Petitions for redetermination of state income taxes must be filed within 90 days from the postmark date of the notice. Petitions for redetermination of drug tax assessments and jeopardy assessments must be filed within ten days of the postmark date of the notice. Jeopardy assessments must be accompanied with payment of the assessment or security for payment acceptable to the department.

If a petition for redetermination is not postmarked within the applicable 10-, 30-, or 90-day limitation, the Notice of Deficiency Determination becomes final; and the tax, interest, and penalty assessment is due and payable. The department will not accept a faxed protest to meet the statutory filing requirements.

When a Notice of Deficiency Determination is protested, the statutory time limit restrictions for collection of the assessed tax, interest, and penalty are suspended until a final determination has been made. Both parties have a duty to keep the case active. Once protested, an assessment is not finalized until an order is issued by the State Tax Commissioner.

**Representation.** Whenever the taxpayer wishes to be represented by an attorney or accountant, the taxpayer must furnish a written authorization for that person to act on the taxpayer's behalf. Representatives may be appointed using a Power of Attorney, Form 33, or its equivalent. No such appointments will be recognized until they are filed with the Nebraska Department of Revenue. In the case of a corporation, anyone other than a corporate officer must be appointed as attorney-in-fact in order to represent the corporation. The Form 33 can be accessed from the department's Web site.

**Informal Conference.** Legal Services of the Nebraska Department of Revenue will acknowledge the receipt of a petition for redetermination in writing. If the taxpayer requests, Legal Services will also schedule an informal conference to be held at the Lincoln office of the Nebraska Department of Revenue. The purpose of the informal conference is to eliminate items from the assessment on the basis of additional information supplied by the taxpayer, and to clarify any factual or legal issues in preparation

for a formal hearing. In many cases, most or all items of protest can be resolved at the informal conference or from information obtained as a result of the informal conference.

If the issues of fact or law raised by the taxpayer's petition are resolved through informal discussions, the case will be closed through issuance of a Motion to Dismiss or a Settlement Stipulation and Order of the State Tax Commissioner.

**Formal Hearing.** If the issues of fact or law raised by the taxpayer's petition are not resolved through informal discussions between the department and taxpayer, the matter will proceed to formal hearing before the State Tax Commissioner. A hearing officer may be designated to preside on behalf of the State Tax Commissioner. The department and the taxpayer will be encouraged to stipulate to the undisputed facts for purposes of the formal hearing. The taxpayer and the department will also be encouraged to agree upon a statement of the remaining factual and legal issues to be submitted for decision by the State Tax Commissioner upon conclusion of the formal hearing. In complex cases, or in cases where agreements are lacking or issues remain undeveloped, the formal hearing may be preceded by a preliminary conference.

At the formal hearing, both the taxpayer and the department are afforded the opportunity to present evidence (including the testimony of witnesses, documents, and other exhibits) and arguments bearing upon the issues raised in the protest. The taxpayer may request that the formal hearing be governed by the rules of evidence of the district court. Such requests must be made at least three days in advance of the hearing. A verbatim record of the proceedings is made by a court reporter or other appropriate method, for use in the event of further appeal.

After reviewing the evidence submitted, the State Tax Commissioner will issue a written order deciding all issues submitted at the formal hearing.

**Appeal of Decision After Formal Hearing.** If the taxpayer disagrees with the decision resulting from the formal hearing, he or she may appeal the decision to the District Court of Lancaster County within 30 days from the postmark date of the State Tax Commissioner's Order. If the decision relates to a deficiency determination for income tax, the taxpayer has 90 days to appeal to District Court. Any such appeal should be filed with the clerk of that court.

The District Court will review the State Tax Commissioner's decision on the basis of the record of the proceedings before the State Tax Commissioner. Taxpayers may not introduce additional evidence in the course of their appeal, but are bound by the evidentiary record made at their formal hearing before the State Tax Commissioner. Proceedings on appeal are governed by the Administrative Procedure Act, Chapter 84, article 9, of the Nebraska statutes.

If no appeal is filed within the required period, the Order becomes final and unappealable. Any tax, penalty, or interest is then due and payable, and the assessment will be collected by the department if not paid.

For additional information about these procedures, please contact the Nebraska Department of Revenue, Legal Services, P.O. Box 94818, Lincoln, Nebraska 68509-4818. The telephone number of the Nebraska Department of Revenue is (402) 471-2971.